

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DARELL NAUTIGUE JENKINS,
Plaintiff,
v.
OFFICER STOKEOKE(S); JOHN DOE,
Defendants.

No. 19-CV-10728 (KMK)

ORDER OF SERVICE

KENNETH M. KARAS, United States District Judge:

Plaintiff, currently incarcerated at Mid-State Correctional Facility, brings this pro se Action under 42 U.S.C. § 1983, alleging that a correction officer colluded with an inmate to assault him while he was at Downstate Correctional Facility. By Order dated January 16, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, in forma pauperis ("IFP").¹

DISCUSSION

A. Service on Correction Officer Stokeoke

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and Amended Complaint until the Court reviewed the Amended Complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the Amended Complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendant Correction Officer Stokeoke through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for this defendant. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon this defendant.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the Action if Plaintiff fails to do so.

B. John Doe Inmate

Under *Valentin v. Dinkins*, a pro se litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the Amended Complaint, Plaintiff supplies sufficient information to permit the New York State Attorney General's Office to identify the John Doe Inmate who assaulted him on January 17, 2018, at Downstate Correctional Facility. It is therefore ordered that the New York State Attorney General's Office, who is the attorney for and agent of the New York State Department of Corrections and Community

Supervision, must ascertain the identity of the John Doe whom Plaintiff seeks to sue here and the address where the defendant may be served. The New York State Attorney General's Office must provide this information to Plaintiff and the Court within sixty days of the date of this Order.

Within thirty days of receiving this information, Plaintiff must file a second amended complaint naming the John Doe defendant. The second amended complaint will replace, not supplement, the Amended Complaint. Once Plaintiff has filed a second amended complaint, the Court will screen the second amended complaint and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 forms with the address for the named John Doe defendant and deliver all documents necessary to effect service to the U.S. Marshals Service.

C. Local Civil Rule 33.2

Local Civil Rule 33.2, which requires defendants in certain types of prisoner cases to respond to specific, court-ordered discovery requests, applies to this Action. Those discovery requests are available on the Court's website under "Forms" and are titled "Plaintiff's Local Civil Rule 33.2 Interrogatories and Requests for Production of Documents." Within 120 days of service of the Amended Complaint, the correction officer defendant must serve responses to these standard discovery requests. In the responses, Defendant must quote each request verbatim.²

CONCLUSION

The Clerk of Court is directed to mail a copy of this Order to Plaintiff, together with an information package.

² If Plaintiff would like copies of these discovery requests before receiving the responses and does not have access to the website, Plaintiff may request them from the Pro Se Intake Unit.

The Clerk of Court is further instructed to complete a USM-285 form with the address for Correction Officer Stokeoke and deliver all documents necessary to effect service on this defendant to the U.S. Marshals Service.

The Clerk of Court is further instructed to mail a copy of this Order and the Amended Complaint to the Attorney General of the State of New York at: 28 Liberty Street, New York, NY 10005.

Local Civil Rule 33.2 applies to this action. Within 120 days of service of the Amended Complaint, the correction officer defendant must serve responses to these standard discovery requests. In the responses, Defendant must quote each request verbatim.

SO ORDERED.

Dated: April 6, 2020
White Plains, New York



KENNETH M. KARAS
United States District Judge

DEFENDANT AND SERVICE ADDRESS

1. Correction Officer Stokeoke
Downstate Correctional Facility
121 Red Schoolhouse Road
Fishkill, NY 12524-0445